

★ MAR 05 2015 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JESSICA ACOSTA,

Plaintiff,

-against-

HALL OF FAME MUSIC STORES, INC.,  
ERIK DABNEY and KEITH BARBOUR,

Defendants.  
-----X

**TOWNES, United States District Judge:**

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

10-CV-5139 (SLT)(LB)

In November 2010, plaintiff Jessica Acosta, commenced this action pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*, and New York Labor Law, alleging that she should have been paid for the hours she worked for defendants as an intern. Although all three defendants were served with a summons and complaint in late November 2010, none of the defendants answered or otherwise responded to the pleading. Accordingly, in January 2011, plaintiff requested that the Clerk of Court enter a default against defendants.

After the Clerk entered the default, plaintiff requested that the Clerk enter a default judgment pursuant to Fed. R. Civ. P. 55(b)(1) in the amount of \$68,247.00 plus interest against all three defendants, jointly and severally. In an endorsed order dated March 4, 2011, this Court denied plaintiff's request, noting that "plaintiff's claims are not for a sum certain or a sum that can be made certain by computation." Although the Court directed plaintiff to "proceed on notice pursuant to Fed. R. Civ. P. 55(b)(2)," the Court did not set a deadline for making the motion and plaintiff did not file a motion pursuant to Rule 55(b)(2) until May 2014. The Court subsequently referred the motion to Magistrate Judge Lois Bloom for a report and recommendation ("R&R").

On February 2, 2015, Judge Bloom issued her R&R, recommending that a default judgment be entered against defendants in the total amount of \$69,224.50. R&R at 13. That amount consisted of \$32,885.25 in unpaid minimum wages and unpaid overtime; \$32,885.25 in liquidated damages; \$3,005 in attorney's fees, and \$449 in costs. *Id.* The R&R specifically advised defendants that they had fourteen days from service of R&R in which to file written objections, and that "[f]ailure to file a timely objection ... generally waives any further judicial review." *Id.* (citing cases) (brackets and ellipsis added).

The R&R also ordered plaintiff to serve a copy of the R&R upon defendants at their last known addresses and to file proof of service with the Court. *Id.* On February 6, 2015, plaintiff's counsel filed a certificate of service, representing that the R&R had been served on defendants via first-class mail addressed to defendants' last known address. Almost a month has passed since the R&R was served, but this Court has yet to receive objections from any of the defendants.

A district court is not required to review the factual or legal conclusions of a magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nonetheless, when no objections are filed, many courts seek to satisfy themselves "that there is no clear error on the face of the record." Fed. R. Civ. P. 72(b) advisory committee note (1983 Addition); *see also Edwards v. Town of Huntington*, No. 05 Civ. 339 (NGG) (AKT), 2007 WL 2027913, at \*2 (E.D.N.Y. July 11, 2007). Accordingly, this Court has reviewed the R&R for clear error on the face of the record. The Court finds no clear error, and therefore adopts the R&R in its entirety as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

### **CONCLUSION**

For the reasons stated above, Magistrate Judge Bloom's Report and Recommendation dated February 2, 2015, is adopted in its entirety. The Clerk of Court is directed to enter a default judgment in favor of plaintiff and against the defendants, jointly and severally, in the amount of \$69,224.50. Upon entry of judgment, the Clerk of Court shall close this case.

**SO ORDERED.**

/s/ Sandra L. Townes

---

SANDRA L. TOWNES  
United States District Judge

Dated: March 4, 2015  
Brooklyn, New York